

# CERTIFICATE.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 120

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FREDERICK W. FINK AND ALBERT PLAUT, TRADING  
AS LEHN & FINK, APPELLANTS,

v.s.

THE UNITED STATES.

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ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE SECOND CIRCUIT.

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FILED FEBRUARY 6, 1898.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 18, 1897.



## 1 United States Circuit Court of Appeals for the Second Circuit.

FREDERICK W. FINK and ALBERT PLAUT,  
 Trading as Lehn & Fink, in the Matter of  
 Their Importation per "Chester," April 6,  
 1894, Appellants,  
 vs.  
 THE UNITED STATES OF AMERICA, Appellee. } Suit A. No. 2031.

*Certificate for Instructions.*

A judgment or decree of the circuit court of the United States for the southern district of New York having been made and entered February 4, 1895, by which it was ordered, adjudged, and decreed that there was no error in certain proceedings herein before the board of U. S. general appraisers, and that their decisions herein be, and the same are hereby, in all things affirmed, and an appeal having been taken from said judgment or decree to this court by the above-named appellants, and the cause having come on for hearing and argument in this court, certain questions of law arose concerning which this court desires the instruction of the Supreme Court of the United States for its proper decision. The facts out of which such questions arose are as follows:

The firm of Lehn & Fink imported into the port of New York, on April 6, 1894, certain parcels of muriate or hydrochlorate of cocaine in crystals, on which duty was exacted at twenty-five per

2 cent. ad valorem, under paragraph 76 of the tariff act of October 1, 1890, as a chemical salt. The importers duly and seasonably protested against such exaction, upon the ground that the merchandise was dutiable at fifty cents per pound under paragraph 74 of the same act as a medicinal preparation in the preparation of which alcohol is used. After decisions by the board of general appraisers and by the United States circuit court of New York the question duly came by appeal from the decision of the circuit court to this court.

Paragraphs 74 and 76 of said act are as follows:

"74. All medicinal preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, fifty cents per pound."

"76. Products or preparations known as alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds and salts, not specially provided for in this act, twenty-five per centum ad valorem."

Muriate of cocaine is an alkaloidal salt and is a chemical salt produced by combination of the alkaloid cocaine and muriatic acid. Salts are either alkaloidal or alkaline, produced by combination of either alkaloid or alkalies with acids. In its preparation alcohol is necessarily used as a solvent. Muriate of cocaine is a medicinal preparation and is known as such by the physician, the chemist, the druggist, and in commerce, and was so known definitely, gen-

2 FREDERICK W. FINK ET AL., ETC., VS. THE UNITED STATES.

erally, and uniformly at and prior to the enactment of the tariff law of 1890. The term "salts" or "chemical salts" is a generic term and includes a commercial class of articles known by 3 chemists and by pharmacists and druggists at the date of the passage of the tariff act as covering, among others, muriate of cocaine. The commercial meaning of the term medicinal preparation is the same as its ordinary meaning, viz., a substance used solely in medicine and prepared for the use of the apothecary or physician to be administered as a remedy in disease. Muriate of cocaine is dispensed in the form in which it is imported, or more often reduced therefrom to a powder by means of a mortar and pestle, or diluted in water or admixed with inert or neutral matter.

The number of chemical salts is excessively large. A very small proportion of this number is used in medicine or as medicinal preparations. There is no adequate testimony in regard to the relative number of imported or importable medicinal preparations in the preparation of which alcohol is used, and of imported or importable chemical salts. The testimony does not disclose which paragraph includes the greater number of articles.

Upon the foregoing facts the questions to be certified are:

1. Is muriate of cocaine properly dutiable under paragraph 74 of the tariff act of October 1, 1890?
- 4 2. Is muriate of cocaine properly dutiable under paragraph 76 of the tariff act of October 1, 1890?

And to that end this court hereby certifies such questions to the Supreme Court of the United States.

New York, January 24, 1896.

WM. J. WALLACE,  
E. HENRY LACOMBE,  
N. SHIPMAN,  
*Circuit Judges.*

5 UNITED STATES OF AMERICA, }  
Second Circuit, } 88:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the cause entitled Frederick W. Fink and Albert Plaut, trading as Lehn & Fink, in the matter of their importation per "Chester," April 6, 1894, appellants, *vs.* The United States of America, appellee (suit A, No. 2031), was duly filed and entered of record in my office by order of said court on the 24th day of January, 1896, and as directed by said court the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto  
Seal United States Cir-  
cuit Court of Appeals,  
Second Circuit.  
State of New York, this 31st day of January, in the year of our

Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

JAMES C. REED,

*Clerk United States Circuit Court of Appeals  
for the Second Circuit.*

[Endorsed:] U. S. circuit court of appeals, second circuit. Frederick W. Fink and Albert Plaut, trading as Lehn & Fink, in the matter of their importation per "Chester," April 6, 1894, appellants, vs. The United States of America, appellee. Certificate for instructions. United States circuit court of appeals, second circuit. Filed Jan. 24, 1896. James C. Reed, clerk.

Endorsed on cover: Case No. 16,176. U. S. circuit court of appeals, second circuit. Term No., 120. Frederick W. Fink and Albert Plaut, trading as Lehn & Fink, appellants, vs. The United States. Filed February 6, 1896.